

FEB 16 2005

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

SENSITIVE

FIRST GENERAL COUNSEL'S REPORT

MUR: 5541

COMPLAINT FILED: September 24, 2004

DATE OF NOTIFICATION: October 1, 2004

DATE ACTIVATED: October 14, 2004

EXPIRATION OF SOL: August 24, 2009

COMPLAINANT:

**Citizens for Responsibility and Ethics in
Washington ("CREW")**

RESPONDENTS:

**The November Fund and
Bill Sittmann, Treasurer,
U.S. Chamber of Commerce;
Tom Donohue;
Bush-Cheney '04;
Ken Mehlman.**

RELEVANT STATUTES:

**2 U.S.C. § 431(4)
2 U.S.C. § 433
2 U.S.C. § 434
2 U.S.C. § 434(f)
2 U.S.C. § 441a(a)(1)(C)
2 U.S.C. § 441a(f)
2 U.S.C. § 441b(a)
2 U.S.C. § 441d(a)
26 U.S.C. § 527e(1), (2)
11 C.F.R. § 100.5
11 C.F.R. § 100.22(a)
11 C.F.R. § 100.29
11 C.F.R. § 100.51(a)
11 C.F.R. § 100.111(a)
11 C.F.R. § 109.21**

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

Internal Revenue Service

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I. INTRODUCTION

This matter arises from a complaint alleging that (1) The November Fund and Bill Sittmann as treasurer ("The November Fund") violated the FECA by failing to register and report as a "political committee"; (2) the U.S. Chamber of Commerce ("the Chamber") and Tom Donohue as president violated the FECA by making corporate expenditures to influence a federal election; (3) The November Fund violated the FECA by paying for electioneering communications with funds from sources prohibited under the FECA, as amended; and (4) The November Fund violated the FECA by making coordinated expenditures that resulted in in-kind contributions to, and that were improperly accepted by, the Bush-Cheney '04 campaign and its campaign manager, Ken Mehlman. Respondents deny all allegations.

The allegations in these matters are similar to the allegations made against the Section 527 organizations at issue in MURs 5403, 5427, 5440, and 5466 (*America Coming Together, et.al.*) and MUR 5487 (*Progress for America Voter Fund*). Accordingly, this Report examines the potential violations of Respondents in a manner similar to the analysis set forth in those MURs. Based on the reasons outlined below, this Office recommends the Commission (1) find reason to believe The November Fund is a political committee under 2 U.S.C. § 431(4) and violated 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a) by failing to register and report, and by accepting prohibited and excessive contributions; (2) find reason to believe the Chamber violated 2 U.S.C. § 441b(a) by making a corporate contribution to influence an election; (3) find no reason to believe The November Fund made or failed to report electioneering communications in violation of 2 U.S.C. § 434(f); and (4) find no reason to believe The November Fund, Bush-

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Cheney '04, or Ken Mehlman violated the Act by making or accepting prohibited, in-kind contributions via coordinated expenditures.

II. FACTUAL AND LEGAL ANALYSIS

A. Factual Background

1. The November Fund

The November Fund was formed in August of 2004 pursuant to section 527 of the Internal Revenue Code.¹ The group has not registered as a political committee with the Commission, nor is it associated with a registered political committee. The November Fund conducted its activities with nonfederal funds raised outside the limitations and prohibitions of the Act, including \$3 million from the Chamber, which constituted 95% of The November Fund's 2004 receipts.

Public statements made by individuals with The November Fund and the Chamber indicate that the group was formed in reaction to the selection of Senator John Edwards as the Democratic nominee for Vice President.² The November Fund has provided no explanation for

¹ Its stated purpose on its Form 8871 is "to engage in political activities that educate the general public regarding the public policy positions of candidates for federal, state, and local office and mobilize voters in compliance with federal and state laws."

² In October, Bill Brock, co-chair of The November Fund, made the following statement: "Kerry's selection of Edwards was such an arrogant act, such an in-your-face thing that we had to do something." Greg Pierce, Inside Politics, The Washington Times, Oct. 11, 2004, at A05. And the press, at least, was under the impression that The November Fund intended from its inception to run television ads featuring John Edwards. "Brock's group, which is supported by the pro-business U.S. Chamber of Commerce, said Tuesday it plans to air ads within a month urging legal limits on lawsuit awards and criticizing trial lawyers, including Edwards." Sharon Theimer, Private groups find loophole in campaign law, Daily Herald, Aug. 25, 2004, at www.herktheherald.com; *see also*, Sharon Theimer, Non-party groups air hard-hitting ads using exemption from new campaign law, NCTimes.com, Nov. 1, 2004, at www.nctimes.com. A press release issued by The November Fund on August 24, 2004 contained the following statements (emphasis added):

"A new 527 political organization announced today that it will conduct a campaign to 'tell the truth about trial lawyers' including a discussion of John Edwards' legal career."

1 the choice of its name, although its communications reference the Presidential election, which
2 occurred on November 8, 2004. Ken Rietz, Chief Operating Officer of Burson-Marsteller at the
3 time, who founded The November Fund, started the group to "emphasize the need for litigation
4 reform and educate the public about the positions of officeholders on that subject." Chamber
5 Resp. at 2. In fact, The November Fund's 2004 activities were limited to attacking and opposing
6 John Edwards, and his running mate John Kerry, for their positions on tort reform.

7 The November Fund has two websites. The first, www.thenovemberfund.org, only
8 contains information about the group and the co-chairs of the group, William Brock and Craig
9 Fuller, and an opportunity to contribute online. At the bottom of that webpage there is a
10 direction to "Visit Our Website: www.thetruthabouttriallawyers.com." It is this second website
11 that contains the group's message and substantive content and is almost entirely focused on
12 criticism of one federal candidate, Senator John Edwards. See Appendix A.

13 The "Truth About Trial Lawyers" site contains numerous references to the Kerry-
14 Edwards campaign including a history of Edwards' political life and his presidential campaign.
15 The website's clear message is that if Kerry-Edwards are elected the reader will not be able to get
16 or afford health care. Furthermore, The November Fund had the following ad on its website:

17 Warning!!!! John Edwards may be hazardous to your health.

18
19 I wish you could know John Edwards the way we know him here in North
20 Carolina. The truth is John Edwards made North Carolina a much more
21 dangerous place to be sick. ... Demand John Edwards tell his friends to stop suing
22 our doctors, abusing our courts and wrecking our economy.

"Fuller, who served as Chief of Staff to Vice President Bush, said the organization will *focus on key battleground states* and will 'educate voters how much the actions of trial lawyers cost our economy over \$200 Billion a year. The health of our economy is an important issue *in this election*.'"

1 In addition to its website, The November Fund ran internet ads using "pop-up video"
2 attached to the AOL Instant Messenger program.³ The pop-up ads ran from September 24th
3 through Election Day, according to The November Fund's spokeswoman, Shelley Hymes.⁴ The
4 internet ads would appear when an AOL Instant Messenger user signed into the program. An
5 image of John Edwards would appear above the user's buddy list, then the video would start in a
6 pop-up window. The video showed John Edward's face "while a female voice said, 'Personal
7 injury lawyers like John Edwards get rich, but you pay the price.'"⁵ At least one of the pop-up
8 ads, "feature[d] a sallow-looking headshot of Democratic vice presidential candidate Sen. John
9 Edwards, gazing across a wall-to-wall field of \$50 and \$100 bills. The text reads, 'Learn the
10 Truth About John Edwards' and offers viewers the chance to click on a link," and that link would
11 take them to The Truth About Trial Lawyers website.⁶

12 The November Fund also sent out an unknown number of direct mail pieces stating:
13 "Doctors are leaving, hospitals are closing, health care costs are skyrocketing at an alarming rate.
14 ... Tell Sen. Kerry and Sen. Edwards that it is time to support common-sense lawsuit-abuse
15 reform."⁷

16 The November Fund claims not to have run any broadcast, cable, or satellite television
17 ads or radio ads identifying a federal candidate.⁸ No electioneering communication reports have
18 been filed by The November Fund with the Commission. The group admits that other forms of

³So-called "pop-up" ads on the internet are similar to commercials on television and appear without any action having been taken by the user/viewer.

⁴Leslie Walker, Pop-Up Videos Hit Instant Messengers, Newsbytes News Network, Oct. 31, 2004, at 2004 WL 97512929; Robert MacMillan, Instant Messenger Delivers Political Pop-Ups, washingtonpost.com, Oct. 27, 2004.

⁵Web saturated with campaigning, Chicago Tribune (from Wash. Post), Nov. 2, 2004, at 2004 WL 97455738.

⁶Robert MacMillan, Instant Messenger Delivers Political Pop-Ups, washingtonpost.com, Oct. 27, 2004.

⁷Greg Pierce, Inside Politics, The Washington Times, Oct. 11, 2004, at A05; see also Democratic VP hopeful takes spotlight in US presidential race, Agence France Presse, Oct. 10, 2004, at 2004 WL 95429127.

1 communication, such as its website, print advertisements, and mass mail pieces, identify Senator
2 John Edwards, but none of the Respondents have provided any samples of the mass mailings or
3 transcripts of phone calls. The November Fund Resp. at 2, 11; Chamber Resp. at 3.

4 Even though the issue of tort reform has been on the public stage in the months following
5 the election, The November Fund does not appear to have been active in any non-election related
6 efforts. It has not changed any of the content on its website, which still features John Edwards
7 and discussion of the Kerry-Edwards campaign.⁹ Rietz, director of The November Fund,
8 commented that "Burson has a policy of not being involved in candidates' campaigns in any way,
9 so I took a leave of absence so the company would not be involved." According to the same
10 article in which Rietz was quoted, "*Rietz added that he will return to Burson following the*
11 *election in November.*"¹⁰

12 2. The Chamber

13 The Chamber is an incorporated non-profit trade association that provides various
14 benefits to its members, which include various forms of businesses but principally corporations.
15 The Chamber represents its members before Congress, holds program and networking events,
16 provides litigation support, provides research and issue briefing, and has member discounts. As
17 noted above, the Chamber provided \$3,000,000 to The November Fund between August and

⁹ Several news articles state, at the very least, the group at one time intended to run such ads, and a transcript of the Kudlow & Cramer show on CNBC from September 15, 2004, contains an "excerpt from TV commercial" by The November Fund that clearly identifies Senator John Edwards.

⁹ Also, the e-petition The November Fund urged the viewer to sign on its website to "Tell John Edwards to urge his friends to: Stop suing our doctors! Stop abusing our courts! Stop wrecking our economy!" is no longer a valid action on the website. One of the stated uses for the information collected from people who signed the e-petition was for The November Fund and "other like-minded tort-reform organizations" to be able to send the e-petition signer "periodic updates on this critical issue." www.thetruthabouttriallawyers.com.

¹⁰ Douglas Quenqua, US Chamber Helping Form Alliance Critical of Edwards' Law Career, PR Week, Aug. 30, 2001 (emphasis added).

1 October of 2004.¹¹ The Chamber is by far the group's largest contributor having provided over
2 95% of The November Fund's revenues. Suzanne Clark, the Chamber's Executive Vice-
3 President and Chief Operating Officer, served on The November Fund's advisory board. The
4 Chamber's response indicates that she had no "day-to-day responsibilities for [The November
5 Fund's] operations" however. Chamber Resp. at 4. The Chamber has denied that any of its other
6 officers or employees were involved with The November Fund.

7 The November Fund sent the Chamber an initial solicitation letter, which did not mention
8 a federal election or federal candidate on August 16, 2004. On August 25th, the day after The
9 November Fund's press release (n.2), the Chamber made its first contribution of \$500,000. It
10 made subsequent contributions totaling \$3 million and issued its own press release entitled "U.S.
11 Chamber Enters Political Debate for Next White House" discussing this "make-or-break
12 election."¹² One press report stated:

¹¹ The November Fund appears to have started with an initial \$500,000 contribution from the Chamber on August 25, 2004. The Chamber then made contributions of \$500,000 on September 27, 2004 and \$2,000,000 on October 1, 2004 respectively.

¹² The August 24th press release stated (emphasis added):

Washington, D.C. – The United States Chamber of Commerce announced it would participate in two new political initiatives to educate voters about the devastating impact of a runaway legal system on the American way of life –during this fall's presidential campaign.

"We cannot ignore what may prove to be a *make-or-break election* for legal reform *at the national level*," said Thomas Donohue, Chamber President and CEO. "*When voters go to the polls, they need to know lawsuit abuse destroys jobs, drives doctors out of business and forces companies into bankruptcy. The extraordinary circumstances surrounding this election have compelled us to support two important new initiatives.*"

The Chamber is joining others in supporting a new 527 Group called The November Fund, which aims to raise public awareness about lawsuit abuse. The group is co-chaired by Craig Fuller, former chief-of-staff to Vice President Bush, and Bill Brock, former Senator and Republican National Committee Chair.

This team has identified seven battleground states where there is the greatest potential to effectively educate voters through a concerted program of TV, radio and print advertising and direct mail, an Internet campaign, and earned media discussing the truth about trial lawyers.

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1 Chamber president Thomas Donahue had warned Democrats earlier this year that
2 his group would drop its 'customary neutrality' in order *to campaign against*
3 *Edwards* if he were selected as John Kerry's running mate. The Chamber still
4 does not intend to make an official endorsement, he said, *but will act aggressively*
5 *through The November Fund to assure Bush's re-election.*¹³
6

7 In describing the Chamber's involvement with The November Fund, Tom Donohue,
8 President of the Chamber, said "We are going to run a campaign that says there is a runaway
9 legal system in this country. We have an acute problem here. *If Edwards ends up in the second*
10 *most important job in the government*, he will influence the appointment of at least a thousand
11 people in the government, and he will be a party to naming the next four justices on the Supreme
12 Court."¹⁴

13 In a subsequent December 6, 2004 letter to the Chamber's board of directors, Tom
14 Donohue stated (emphasis added):

15 *As for the presidential race*, the Chamber did not endorse in the election, but
16 executed a voter education and get-out-the-vote effort, as well as provided
17 significant support to the November Fund because we believed that *the prospect*
18 *of having a trial lawyer a heartbeat away from the presidency* would influence
19 our legal, judicial, and regulatory environment for years to come.
20

21 The November Fund targeted four states in particular – West Virginia, Iowa, New
22 Mexico, and yes, Ohio. Obviously many factors influence the *outcome of a*
23 *presidential election*. I would only note that all four states targeted by the
24 November Fund ended up in the Bush column.¹⁵
25
26
27

A subsequent cnn.com-Inside Politics story from August 25, 2004 reported that "[t]he U.S. Chamber of Commerce plans to run TV ads attacking the former trial attorney [John Edwards] through a new political organization called the November Fund. The ads will run in seven states where polls show a tight race between Kerry and Bush, the chamber said last night in an e-mail statement." John Mercurio, Still talking swift boats, cnn.com, Inside Politics, Aug. 25, 2004.

¹³ Douglas Quenqua, US Chamber Helping Form Alliance Critical of Edwards' Law Career, PR Week, Aug. 30, 2004 (emphasis added).

¹⁴ Alan Murray, Republicans Form '527' Group to Run Anti-Edwards Spots, Wall Street Journal, Aug. 24, 2004, at www.wsj.com (emphasis added).

¹⁵ <http://www.smartbrief.com/hosted/c100/c100-president-letter.pdf>.

B. Political Committee Status

As a Section 527 organization, The November Fund is by law "a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures, or both, for an exempt function." 26 U.S.C. § 527(e)(1). The "exempt function" of 527 organizations is the "function of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization," or the election or selection of presidential or vice presidential electors. 26 U.S.C. § 527(e)(2). As a factual matter, therefore, an organization that avails itself of 527 status has effectively declared that its primary purpose is influencing elections of one kind or another.

The Act defines a "political committee" as any committee, club, association, or other group of persons that receives "contributions" or makes "expenditures" for the purpose of influencing a federal election which aggregate in excess of \$1,000 during a calendar year.¹⁶ 2 U.S.C. § 431(4)(A). The term "contribution" is defined to include "any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(8)(A)(i). *See, e.g., FEC v. Survival Educ. Fund, Inc.*, 65 F.3d 285, 295 (2d Cir. 1995) (where a statement in a solicitation "leaves no doubt that the funds contributed would be used to advocate [a candidate's election or] defeat at

¹⁶ To address overbreadth concerns, the Supreme Court has held that only organizations whose major purpose is campaign activity can potentially qualify as political committees under the Act. *See, e.g., Buckley v. Valeo*, 424 U.S. 1, 79 (1976); *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238, 262 (1986).

1 the polls, not simply to criticize his policies during the election year," proceeds from that
2 solicitation are contributions).

3 The activities of The November Fund clearly show that at least some of its activities were
4 aimed at defeating John Edwards in the federal election. The name alone, "The November
5 Fund," contains an obvious reference to the November federal election. The director of the
6 group only took a temporary leave of absence from his position at Burson Marsteller to start and
7 head the group until the November election was over, stated explicitly that he was doing so in
8 order not to involve Burson Marsteller the election, and then planned to return to his position at
9 Burson. And the group appears to have ceased its activities since the election.

10 The group's public statements and press releases would very likely lead a potential
11 contributor to believe his or her contribution would be used to oppose one specific federal
12 candidate.¹⁷ Given the activities of The November Fund and the amount of money it accepted
13 and expended, reasonable inferences suggest The November Fund may have accepted \$1,000 in
14 contributions or made \$1,000 in expenditures and therefore should have registered with the
15 Commission and filed reports as a political committee. This warrants further investigation.

16 The November Fund's website (www.thetruthabouttriallawyers.com) is devoted to
17 criticizing Sen. Edwards and his policies surrounding tort reform and health care, and the site

¹⁷ Bill Brock, co-chair of The November Fund, appeared on the CNBC show, Kudlow & Cramer, on September 15, 2004. The lead-up to his appearance was "And later on, the Republicans take aim at trial lawyers and at John Edwards, in particular. We'll be talking to former Senator Bill Brock. He's going to be giving us a first look at the new ad that's coming from the November Fund." Then Mr. Brock made the following statement on the show:

We've just simply got to address this issue, and the fact that the Democrats would put John Edwards on their ticket is such an in-your-face action to the American people, like "We don't care what you think. We're just going to go ahead and refuse to have any reform whatsoever of the tort system." And that's an issue the people need to know about.

Just prior to Mr. Brock's interview, in which the above statement was made, one of the commercials from the group's website was previewed. It was a commercial that clearly identified John Edwards.

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1 asks the viewer to "Sign the E-Petition! Tell John Edwards to urge his friends to: Stop suing our
2 doctors! Stop abusing our courts! Stop wrecking our economy!" While the website itself is still
3 available, the two commercials located on the website that clearly identified John Edwards, and
4 to which some of the AOL pop-up commercials directed viewers, have been pulled off the
5 website since the election.¹⁸ The site content (with numerous references to Senators John Kerry
6 and John Edwards and the Kerry-Edwards campaign) would lack relevance after the election.
7 Also, as previously mentioned, the e-petition feature no longer appears to be active. The fact that
8 the commercials have been pulled from the website lends support to the argument that the
9 group's focus was to influence a federal election.

10 The November Fund's Post-Election Form 8872 reveals total payments of \$200,000 to
11 one vendor for "internet advertising" easily surpassing the \$1,000 threshold for political
12 committee status. Therefore, if the contents of the group's web activities, including its websites,
13 the commercials that were available on the website, and the pop-up commercials that ran on
14 AOL Instant Messenger, constituted expenditures, then The November Fund would be a political
15 committee under the FECA. 2 U.S.C. § 431(4); 11 C.F.R. § 100.5.

16 If The November Fund is a political committee, then it is subject to the registration and
17 reporting requirements, as well as the contribution limitations and source prohibitions, of the
18 Act. See 2 U.S.C. §§ 431(4)(A), 433, 434, 441a, and 441b. Based on the information available,
19 there is sufficient evidence to investigate whether The November Fund accepted \$1,000 in
20 contributions or made \$1,000 in expenditures. Therefore, this Office recommends that the
21 Commission find reason to believe that The November Fund violated 2 U.S.C. §§ 433, 434,

¹⁸ This Office is not sure when the commercials were pulled off the site. They remained on the site for some period after the election but were pulled apparently sometime between the last week or two of November and December 9,

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1 441a(f), and 441b(a) by failing to register as a political committee with the Commission; by
2 failing to report its contributions and expenditures; by knowingly accepting contributions in
3 excess of \$5,000; and by knowingly accepting corporate contributions.

4 **C. Corporate Contributions**

5 Based on the information set forth above, it appears that the \$3 million the Chamber
6 provided to The November Fund may constitute a prohibited corporate contribution and
7 expenditures made for the purpose of influencing a federal election. Accordingly, this Office
8 recommends the Commission find reason to believe the U.S. Chamber of Commerce and Tom
9 Donohue violated the Act by making prohibited corporate and excessive contributions. 2 U.S.C.
10 §§ 441b(a), 441a(a)(1)(C).

11 **D. Electioneering Communications**

12 An electioneering communication is a broadcast, cable, or satellite communication that
13 clearly identifies a federal candidate within 60 days before the general election. 11 C.F.R. §
14 100.29(a). Although The November Fund made communications that clearly identified John
15 Edwards within 60 days before the general election, The November Fund denies having made
16 any electioneering communications and there is no evidence to suggest that any of these
17 communications were by means of broadcast, cable, or satellite. Thus it appears that The
18 November Fund sponsored no communications that would qualify as an electioneering
19 communication. Therefore, this Office recommends the Commission find no reason to believe
20 The November Fund violated 2 U.S.C. § 434(f) by failing to report electioneering
21 communications.

E. Coordination

Complainant cites the April 19, 2004 meeting of trade associations to discuss GOTV practices and the long history of the founders of The November Fund, Ken Rietz, William Brock, and Craig Fuller, with the Republican Party and the Bush administration as the basis for contending there was coordination between The November Fund and Bush-Cheney '04. The April 19, 2004 meeting at the Chamber to discuss GOTV practices was attended by various trade associations. Ken Mehlman, campaign manager for Bush-Cheney '04, and Ed Gillespie, chairman of the RNC, attended and gave speeches. It appears that Mary Beth Cahill, campaign manager for Kerry for President, and Terry McAuliffe, chairman of the DNC, were invited to attend, and that the Kerry campaign was represented at the meeting by Tad Devine. Respondents claim that November Fund officials, Ken Rietz, William Brock, Craig Fuller, or Suzanne Clark did not attend the meeting.

For a communication to be coordinated, it must be paid for by someone other than the candidate or the candidate's authorized committee, it must satisfy one of the "content" standards, and it must satisfy one of the "conduct" standards. 11 C.F.R. § 109.21(a). It seems quite likely The November Fund issued public communications through newspapers, mass mailings, telephone banks, or other means that meet one of the content standards by clearly identifying John Edwards within 120 days before the election.¹⁹

There is no evidence, however, that The November Fund engaged in any conduct that would satisfy one of the conduct standards. Since it appears that there were no November Fund officials at the April 19th meeting and The November Fund was not yet formed at that time, there

¹⁹ In fact, in its response, The November Fund admitted to issuing print advertisements and mass mail pieces that identified Sen. Edwards. The November Fund Resp. at 2, 11; Chamber Resp. at 3.

1 is no evidence that a request or suggestion was made by the campaign, or substantial discussion
2 or material involvement occurred by the campaign at that meeting regarding any future
3 communications by The November Fund. 11 C.F.R. § 109.21(d)(1)-(3). There is also no
4 evidence The November Fund and Bush-Cheney '04 used a common vendor, that The November
5 Fund hired a former employee or independent contractor of the campaign, or that The November
6 Fund's communications included the dissemination, distribution, or republication of Bush-
7 Cheney '04 campaign materials. 11 C.F.R. § 109.21(d)(4)-(6).

8 Therefore based on the information ascertained thus far, this Office recommends the
9 Commission find no reason to believe that The November Fund violated 2 U.S.C. §§ 441a and
10 434 by making and failing to report excessive contributions in the form of coordinated
11 expenditures, to Bush-Cheney '04, Inc. or that Bush-Cheney '04, Inc. or Ken Mehlman violated 2
12 U.S.C. §§ 441a(f) and 434 by accepting and failing to report excessive and prohibited in-kind
13 contributions from The November Fund.

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IV. RECOMMENDATIONS

- 1) Find reason to believe The November Fund and its treasurer, Bill Sittmann, violated 2 U.S.C. §§ 433, 434, 441a(f), and 441b(a), by failing to register and report as a political committee with the Commission; by knowingly accepting contributions in excess of \$5,000; and by knowingly accepting corporate contributions;
- 2) Find reason to believe the U.S. Chamber of Commerce and Tom Donohue violated 2 U.S.C. § 441b(a) by making corporate contributions to a political committee to influence an election;
- 3) Find no reason to believe The November Fund and its treasurer, Bill Sittmann, violated 2 U.S.C. § 434(f) by making and failing to report electioneering communications;
- 4) Find no reason to believe The November Fund violated 2 U.S.C. §§ 441a and 434 by making and failing to report excessive contributions in the form of coordinated expenditures, to Bush-Cheney '04, Inc.;
- 5) Find no reason to believe that Bush-Cheney '04, Inc. or Ken Mehlman violated 2 U.S.C. §§ 441a(f) and 434 by accepting and failing to report excessive and prohibited in-kind contributions from The November Fund;
- 6) Approve the attached factual and legal analyses;
- 7) Authorize the use of compulsory process against all respondents and witnesses in this matter, including the issuance of appropriate interrogatories, document subpoenas, and deposition subpoenas, as necessary; and
- 8) Approve the appropriate letters.

Lawrence H. Norton
General Counsel

2/16/25
Date

BY: Rhonda J. Vodingh
Associate General Counsel
for Enforcement

Mark Shonkwiler
Assistant General Counsel

Audra L. Wassom
Attorney

Attachments:

1. Appendix A – The Truth About Trial Lawyers website

APPENDIX A

WWW.THENOVEMBERFUND.ORG

THE TRUTH ABOUT TRIAL LAWYERS LINK

VIEW OUR COMMERCIALS

YOU BE THE JUDGE – HAZARDOUS TO YOUR HEALTH

NEWSROOM ARTICLES (see

<http://www.thetruthabouttriallawyers.com/newsroom.asp>)

WHO'S REALLY BEHIND THE KERRY-EDWARDS CAMPAIGN?

http://www.thetruthabouttriallawyers.com/whos_really_behind.asp

HOW MUCH DO JUNK LAWSUITS COST YOU?

http://www.thetruthabouttriallawyers.com/junk_lawsuits.asp

JOHN EDWARDS: TRUE TO HIS COURTROOM ROOTS

http://www.thetruthabouttriallawyers.com/courtroom_roots.asp

THE WAR ON AMERICA'S HEALTH CARE SYSTEM

http://www.thetruthabouttriallawyers.com/war_on_healthcare.asp

THE CLASS-ACTION RACKET

http://www.thetruthabouttriallawyers.com/class_action.asp

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Edward W. ARB.

THE NOVEMBER FUND

ABOUT US

The November Fund is dedicated to telling America the truth about trial lawyers, their efforts to stop legal reform, and the impact of the trial-lawyer lobby in Washington, D.C. The truth is that trial lawyers have hurt everyone from small businesses to good doctors.

Personal-injury lawyers claim to fight for "the little guy." But they're not. They're using "the little guy" to get rich. And while they get rich, America suffers... because junk lawsuits don't just hurt doctors and small businesses. They hurt us all.

Thanks to trial lawyers, more than 75% of OB/GYNs have been sued. 20 states are in a health care crisis. 40 million Americans are unable to afford basic health care. And every American pays the equivalent of a five percent tax on wages to foot the bill for junk lawsuits.

Senator John Edwards-a trial lawyer-has received millions of dollars in campaign contributions from personal-injury lawyers. In return, Edwards has done everything he can to stop legal reform. Without reform, trial lawyers will keep getting rich and Americans will keep paying the price.

Every American needs to know the truth about the cost of junk lawsuits and the influence of the trial-lawyer lobby in Washington, D.C. Find out the facts: visit our website, The Truth about Trial Lawyers.

LEADERSHIP

The November Fund is co-chaired by Bill Brock and Craig Fuller.

Bill Brock

Former Senator Bill Brock served fourteen years in Congress before being elected as Chairman of the Republican National Committee in 1977. He served four years in President Reagan's Cabinet as the United States Trade Representative, and subsequently served as United States Secretary of Labor. He is the founder and Chairman of Bridges Learning Systems, a firm which supports educational reform by providing K-12 schools and post-secondary educational institutions tools to diagnose and remediate underdeveloped learning abilities.

Craig Fuller

Fuller spent nearly a decade in the White House during the terms of Presidents Ronald Reagan and George H. W. Bush. His various positions included chief of staff to Vice President Bush and assistant to President Reagan for Cabinet Affairs. Fuller currently serves as president and CEO of the National Association of Chain Drug Stores.

BOARD OF DIRECTORS

John Edwards

John Edwards

John Edwards

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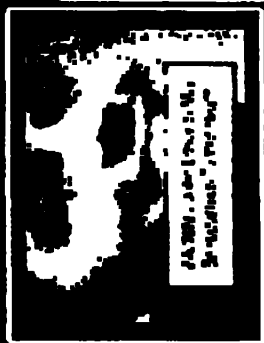
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The Truth About Trial Lawyers

The truth about trial lawyers is that they are the most powerful and most corrupt group of people in America. They are the ones who control the courts and the legal system. They are the ones who make the rules and the laws. They are the ones who decide who wins and who loses. They are the ones who control the fate of millions of people. They are the ones who control the future of our country.

YOU BE THE JUDGE



Sign the E-Petition!

Find out what the truth is about trial lawyers. Sign the E-Petition today!

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WHAT CAN I
DO TO HELP?

Next time...

What Really Behind the
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How Much do Lawyers
Really Cost you?

John Edwards: From the
High Courtroom to the

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Submit

Your email address and zip code will appear on a petition to John Edwards asking him to tell his trial lawyer friends to stop abusing our courts, suing our doctors, and wrecking our economy. The November Fund and other like-minded tort-reform organizations may also use this information to send you periodic updates on this critical issue.

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The Truth About Trial Lawyers

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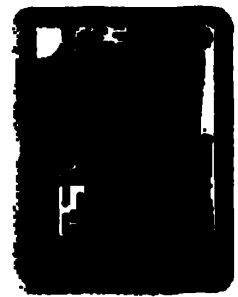


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You Can Help Today!

Sign the E-Petition!

Tell John Edwards to urge his friends to:

- Stop suing our doctors!
- Stop abusing our courts!
- Stop wrecking our economy!

Email: Zip Code:

Your email address and zip code will appear on a petition to John Edwards asking him to tell his trial lawyer friends to stop abusing our courts, suing our doctors, and wrecking our economy. The November Fund and other like-minded tort-reform organizations may also use this information to send you periodic updates on this critical issue.

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The Truth About Trial Lawyers

They have the money. They control the candidates. Their agenda is clear.

If Edwards is elected, he will be a man in control of the money campaign. Edwards' supporters are not interested in the health of the people. They are interested in the money.

You Be The Judge!

Hazardous to Your Health

"Some imaginative physicians have suggested that Edwards and his ilk can be likened to a parasitic infection, sucking the lifeblood out of the medical industry."

Glenn W. Knox, MD, FACS

Has John Edwards' career really been focused on "the little guy"? Or have his million-dollar lawsuits hurt the people he says he helps? In Senator Edwards and the Destruction of American Healthcare, Dr. Glenn W. Knox, a physician from Florida, examines Senator Edwards' trial lawyer career, the millions of dollars that he made from medical liability lawsuits, and the medical liability crisis in America.

Rather than focusing on "good folk and the little guy," Dr. Knox maintains that Senator Edwards used questionable medical theories to win enormous fees for himself and his firm. "While collecting tens of millions of dollars in contingency fees for himself, [John Edwards] laid waste to much of the practice of medicine in North Carolina."

An Edwards critic was quoted as saying, "[John] Edwards always helped the little guy as long as he got a million dollars out of it. Rather than 'gravitating toward cases involving good folks,' Edwards coldly screened cases in order to select ones that he was virtually assured to win."

Knox lays out in detail how John Edwards would determine which trials had the

Newsweek

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John Edwards: Inside
the Courtroom Battle

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most lucrative potential -- and then spend hundreds of thousands of dollars preparing for his cases with the aid of teams of legal experts, doctors and nurses, economists (to figure out the costs of human life), and jury focus groups that would provide information on whether or not to accept a settlement agreement. Edwards told *Lawyer Weekly*, "... You can use [focus groups] to decide whether to get involved in a case or whether to accept a settlement offer, but our primary use is trial preparation."

As well-respected North Carolina Doctor Craig VanDerVeer told The November Fund, "The John Edwards we know crushed obstetrics, gynecology, and neurosurgery in North Carolina. As a result, thousands of patients lost their healthcare. And all of this for the little people? How many little people do you know who will supply you with \$80 million in legal fees over a couple of years?"

Learn the facts. Because trial lawyers may be hazardous to your health.

Recent You Be The Judge Articles

- At What Cost?
- The Health Care Crisis
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- The Biggest Threat
- An American Problem
- Women At Risk
- Fred Baron and Company
- Dr. VanDerVeer's Concerns
- Dr. Hugh Lefler's Story

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The Truth About Trial Lawyers

They have the money. They control the candidate's career.

They have the money. They control the candidate's career. They have the money. They control the candidate's career.

EdwardsWatch.org

Institute for Legal Reform

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For More Information, please contact *Shelley S. Hymes*, 202-394-3438.

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The Truth About Trial Lawyers

They have the money. They control the candidates. Their agenda is clear.

For decades, the trial lawyers have been the most powerful special-interest group in the Democratic Party. Year after year, they funnel millions of dollars into the Democrats' purses, secure in the knowledge that their donations will protect them against legislation that could stop them from exploiting the legal system.

Who's Really Behind the Kerry-Edwards Campaign?

The Kerry-Edwards campaign is tainted by the influence of personal-injury lawyers. As the nation's most powerful special-interest group, trial lawyers all but run the Democratic Party. Year after year, they funnel millions of dollars into the Democrats' purses, secure in the knowledge that their donations will protect them against legislation that could stop them from exploiting the legal system.

"What's beyond dispute is that trial lawyers are a special interest. They pump millions of dollars into Democratic coffers because their livelihoods depend on [it]."—"Mr. Edwards' Bundle of Secrets," *Washington Post* editorial

As of July 2004, trial lawyers have contributed nearly \$12 million to the Kerry-Edwards campaign for the Presidency—more than ten times the contributions of any other donor group.¹ By contributing heavily to the Kerry-Edwards campaign, trial lawyers are hoping to put a stop to legal reform legislation for the next four years.

"There's every reason to believe that the [trial lawyers] behind Mr.

Newsweek

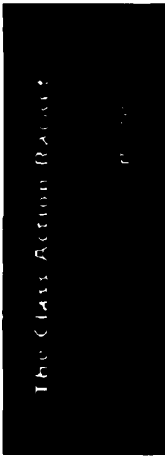
Who's Really Behind the Kerry-Edwards Campaign?

How Much Do Trial Lawyers Cost You?

John Edwards' Trial Lawyers' Courtroom Reality

The Warren American Health Care System

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Edwards have a clear expectation of entering Washington next January as victors, and closer to the center of power than they've up to now dared to dream."—Walter K. Olson, *The Wall Street Journal*

■ Campaign Donors

Trial lawyers and law firms are the top contributors to the Kerry-Edwards campaign, and both Kerry and Edwards support policies that are guaranteed to keep trial lawyers in a very lucrative business for years to come.

"Having Kerry and Edwards elected will put us in a far better position. We will have much greater access to the White House."—Lance Block, trial lawyer

Some of the most generous donors to the Kerry-Edwards campaign include:

Fred Baron, Baron & Budd, PC
Baron, a well-known asbestos litigator, served as Edwards' campaign finance chairman during Edwards' bid for the Presidency. Since Kerry received the Democratic nomination and named Edwards as his running mate, Baron & Budd has become the second largest donor to the Kerry-Edwards campaign. Baron & Budd is known for representing clients with no physical manifestations of asbestos damage, drawing high-dollar personal-injury awards away from legitimately injured plaintiffs.²

John O'Quinn, O'Quinn & Laminack
This ruthless trial lawyer is single-handedly responsible for bankrupting Dow-Coming in breast-implant litigation³—a suit for which O'Quinn raked in at least \$40 million in attorney's fees.⁴

Talb Turner, Turner & Associates, PA
Turner is infamous for his role in the recent Edwards campaign-finance scandal. Reports Walter K. Olson of the *Wall Street Journal*: "Mr. Turner's firm was responsible for one of the chief embarrassments to hit the Edwards campaign,

when a law clerk stated publicly that firm higher-ups had assured staffers they'd be reimbursed if they donated to the Senator's White House run... Mr. Turner himself, puzzlingly, spoke to reporters as if he hadn't realized the practice was unlawful.⁴

Paul Minor, Minor & Associates

Last July, Minor—the tenth-largest contributor to the Kerry-Edwards campaign—was accused of delivering hundreds of thousands of dollars to a Mississippi Supreme Court judge and two lower-court judges in return for favorable verdicts in his cases. He currently faces federal charges of fraud, bribery, and racketeering, which could result in up to \$3.75 million in fines and 120 years in prison.⁵

■ Campaign-Finance Facts

- Senator Kerry has received more campaign contributions from trial lawyers than any other Senator in the past 15 years.⁷ And, not coincidentally, he has consistently voted against legal-liability reform measures in Congress.

- Sam Dealey and Dick Morris of *The Hill*, among others, have alluded to the possibility that trial lawyers and law firms may be sidestepping campaign-finance laws by providing funds to law clerks and paralegals, who then donate the funds to the Kerry-Edwards campaign, or by making donations in the name of employees.⁸ Both practices are prohibited by federal law.

- 88 percent of contributions to Edwards' senatorial campaign came from trial lawyers and law firms.⁹ During his term in the Senate, Edwards voted against every effort to reform the U.S. legal system.

- Of Edwards' top 25 presidential campaign donors, 22 were trial lawyers or law firms.¹⁰ He raised \$7.4 million dollars during the first quarter of 2003, 63 percent of which came from personal-injury lawyers.

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The Truth About Trial Lawyers

How Much Do Junk Lawsuits Cost You?

John Kerry and John Edwards' unwavering support of a flawed legal system has enabled personal-injury attorneys to run roughshod over the class-action courts, costing Americans hundreds of billions of dollars each year. Trial lawyers are the big winners, receiving millions of dollars in fees.

Trial lawyers hunt down opportunities to bring huge settlements out of corporations. While these attorneys claim to work on behalf of the "little guy," their primary interest is the money they stand to make. In most class-action cases, as much as half of the damages awarded go straight into trial lawyers'—not plaintiffs'—pockets. As long as they get paid, trial lawyers don't care who loses.

"The John Edwards we know crushed [obstetrics, gynecology,] and neurosurgery in North Carolina. As a result, thousands of patients lost their health care. And all of this for the little people? How many little people do you know who will supply you with \$60 million in legal fees over a couple of years?"—Dr. Craig VanDerVeer, neurosurgeon

The fact is, you and everyone else in America pay the price for junk lawsuits—not just the hospitals, doctors, small businesses, corporations, or even the plaintiffs who don't receive suitable compensation.

- Every year, class-action suits cost Americans hundreds of billions of dollars in taxes and increased costs for goods and services. And it all goes to support a system that trial lawyers manipulate to get rich. In fact, one out

—

What's Really Behind the Kerry-Howard Controversy?

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John Edwards, Vice President (Operations)

The War on America's
Health Care System

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of every twenty dollars you earn helps pay trial lawyers' fees.

- The cost of class-action litigation for average Americans is equivalent to a 6 percent tax on wages.¹⁷ Meanwhile, lawyers have been known to rake in up to one billion dollars in fees on a single settlement.
- In 2002, class-action litigation cost the average American family of four \$3,234. That's nearly a 25 percent increase over 2001. If costs continue to rise at the same rate, a family of four will stand to lose \$4,012 in 2005.¹⁸
- Over the last 50 years, class-action costs in the U.S. have skyrocketed. Today, class-action costs are more than 100 times greater than they were in 1950. By comparison, America's gross domestic product (GDP) has only increased by a factor of 35 in the same timeframe. In other words, class-action costs are increasing three times as fast as America's economic growth rate.¹⁹

Junk lawsuits affect the quality, cost, and availability of the goods and services you receive. The effect of medical-malpractice litigation on the U.S. health care system is a prime example:

- In order to decrease the possibility of malpractice litigation, physicians have begun to practice "defensive medicine"—a practice that costs American between \$70 billion and \$128 billion every year.²⁰ With defensive medicine, physicians err on the side of caution. They protect themselves against medical-malpractice suits by over-treating their patients, or by prescribing medications and ordering tests that might not be necessary.
- Medical malpractice suits increase insurance premiums for physicians. In California, where non-economic medical-liability damages (jury awards for pain and suffering, for example) have been capped at \$250,000, OB-GYNs in some parts of the state can expect to pay about \$30,000 per year in liability insurance. The same OB-GYN would have to pay \$140,000 per year to be insured in Illinois or Nevada and nearly \$250,000 per year for insurance in Florida, states where medical-malpractice payouts have not been capped.²¹
- Increased insurance premiums often drive good physicians out of business. In fact, 45 percent of hospitals reported that increasing medical-liability insurance costs have resulted in the loss of physicians and/or reduced coverage in emergency departments.

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The Class Action Racers

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The Truth About Trial Lawyers

They have the money. They control the candidates. Their agendas are clear.

They have the money. They control the candidates. Their agendas are clear. They have the money. They control the candidates. Their agendas are clear.

John Edwards: True To His Courtroom Roots

Since 1990, trial lawyers have contributed more than half a billion dollars to Democratic campaigns. Their grip on the purse strings of the Democratic Party ensures the perpetuation of a flawed legal system that offers a bottomless barrel of cash to personal-injury attorneys.

Trial lawyers have a partner in John Edwards. A trial lawyer by profession, Senator Edwards has never failed to protect the interests of the personal-injury bar. And the trial lawyers have never failed to contribute generously to Edwards.

Without trial lawyers' contributions, Edwards would have had a mere \$2 million with which to campaign for the Senate. Trial lawyers' donations made Edwards the top fundraiser during the Presidential primaries. And trial lawyers' tremendous financial support has ensured Edwards' spot on the Democratic ticket.

"The lawyers lobby has been pouring money into the Kerry campaign to buy the vice presidential slot for Edwards."—Rob Christensen, North Carolina News & Observer

With Edwards as Kerry's running mate, trial lawyers are rejoicing at the prospect of securing their anti-legal reform platform. His history is marked by allegiance to trial-lawyer interests, and trial lawyers are hoping that his future holds the same promises.

Newsweek

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The Class Action Racket

■ The Trial-Lawyer Days

John Edwards spent 20 years as a trial lawyer, and was one of the most successful personal-injury attorneys of his time. Specializing in medical malpractice suits, he typically represented clients whose children had experienced physical trauma during delivery.

- Edwards' prowess as a litigator resulted in jury awards of more than \$163 million in a total of 63 lawsuits.
- His blockbuster settlements actually contributed to a massive increase in malpractice insurance premiums, making it even harder for good doctors to stay in practice and for the average American to afford quality medical care.
- Edwards' false claims that C-section deliveries could prevent cerebral palsy drove obstetricians to perform C-sections more often in order to protect themselves from malpractice litigation. These major surgeries, which used to be performed as a last resort to protect the safety of the mothers, are now common, thanks to the threat of malpractice litigation. Obstetricians now perform five times as many C-sections as in the past; however the rate of incidence of cerebral palsy has not changed.²³

■ From the Courtroom to Congress

■ Edwards Makes a Bid for the U.S. Senate
In 1997, John Edwards opted to run for a seat in the U.S. Senate. The wealth and recognition he'd gained during his 20 years in the North Carolina courts made him a serious contender in the Senate race, despite his utter lack of political experience.

- Edwards' campaign rhetoric included a vow not to accept money from lobbyists or PACs. However, 85 percent of his Senate campaign was ultimately funded by the nation's most powerful special-interest group: personal-injury lawyers. These donations included \$8.15 million in personal contributions from Edwards himself.
- FEC records indicate that Edwards' Senate campaign was the third most expensive in North Carolina history. Without his own funds and the contributions of personal-injury lawyers, Edwards would have had less than \$2 million with which to run his Senate campaign—compared to the \$10 million raised by his incumbent opponent.²⁴ By virtually paying for Edwards' seat in the Senate, trial lawyers helped ensure the continued defeat of legal reform legislation.

■ The Junior Senator from North Carolina

■ Edwards' History in Congress: In 1998, Edwards' campaign proved successful, and he replaced North Carolina's incumbent Republican, Leuch Faircloth, in the U.S. Senate. Since his election, Edwards has maintained his ties to the personal-injury bar, consistently supporting the interests of trial lawyers over those of his constituents.

- Edwards is the only Democrat on the Senate Judiciary Committee who has failed to attend the debates on asbestos litigation reform. Some suggest that Edwards intentionally distanced himself from the debate so as to stay in the good graces of his Presidential campaign benefactors: personal-injury lawyers.²⁵

- In spite of his vocal opposition to PAC money, Edwards himself established a PAC in 2001: the New American Optimists (NAO). Nearly 70 percent (more than \$4.1 million) of the NAO PAC's receipts have come from trial lawyers.

- According to *Congressional Quarterly*, Edwards consistently votes along Democratic Party lines. Rather than cooperating with Republican and Independent Senators like his Democratic colleagues, Senators Breaux and Nelson, Edwards stubbornly refuses to compromise on highly partisan issues.²⁶

- Despite his advocacy on behalf of alleged malpractice victims during his days as a trial lawyer, Edwards helped to defeat legislation to create a special fund for the families of individuals who suffer from cerebral palsy, and whose affliction is not the result of medical malpractice.²⁷ With this vote, Edwards showed his true trial-lawyer colors, revealing that his fight to get money for cerebral palsy victims was entirely based on personal gain.

- Since his first day in the Senate, Edwards has voted against every piece of legal reform legislation, even though the only people who benefit from his actions are the trial lawyers themselves—not the average Americans Edwards claims to represent.

■ Vying for the White House

■ Edwards as Presidential Hopeful: In 2003, Edwards began to lose popularity as a Senator. In light of a public opinion poll in which North Carolinians chose an unnamed Republican candidate over Edwards,²⁸ Edwards opted not to run for re-election and instead announced his bid for the Democratic presidential nomination. Because of his history opposing legal reform, and his background as a trial lawyer, personal-injury attorneys rallied to support Edwards' presidential campaign.

- Of Edwards' top 25 presidential campaign donors, 22 were trial lawyers or law firms.²⁸
- Reports the *Washington Post*, "After announcing in January that he would compete for the Democratic presidential nomination, Sen. John Edwards (D-NC) went on a three-month tear through 176 fundraising events, most of them tapping into the pocketbooks of the nation's personal-injury attorneys... The drive paid off: Edwards took in \$7.4 million in the first quarter of 2003, making him the top money-raiser in the Democratic field."²⁹
- Of the \$7.4 million dollars raised during the first quarter of 2003, 63 percent (\$4.65 million) of all donations to Edwards' presidential campaign came from personal-injury lawyers.³¹
- Dick Morris of *The Hill*, writes "There is evidence that Edwards may have circumvented the campaign-finance law by bundling contributions from law clerks and paralegals who did not actually make the donations from their own funds."³²
- One of the leading asbestos litigation firms in the country—New York City-based Weitz & Lusenbery—contributed \$34,289 in questionably raised employee donations to Edwards' presidential campaign.³³
- Ted Turner, a fellow trial lawyer, donated a total of \$200,000 to Edwards' campaign and PAC. Some contributions allegedly were in the name of several clerks in his law office. However, when investigations were made into the donations, more than one clerk revealed that they had made contributions to Edwards' campaign after Turner himself had assured them that they would be reimbursed—a practice that is forbidden by federal law. As a result, Edwards had to return \$10,000 to employees of Turner & Associates. In spite of his legal background, Turner claimed that he was not aware that reimbursing his employees for their contributions was illegal.³⁴
- On the campaign trail, Edwards bent to death his signature "two Americas" speech, in which he claims to represent the America of the "little guy," not the America of the rich. But what Edwards failed to reveal to voters was just how much he has contributed to the creation of these two Americas, and how much his career as a trial lawyer and Senator has hurt the "little guy." Says Stuart Taylor of the *National Journal*, Edwards has actually spent his life "fighting against companies that create millions of jobs for Americans and help make this the world's wealthiest country, that develop miracle cures for once debilitating diseases, that enable us to buy cars and houses without fear of financial ruin, and that seek to put a lid on the soaring health care costs that threaten to bankrupt our nation."³⁵

• Since Edwards began campaigning for the White House, he has been absent for nearly half of all Congressional votes.³⁹

• On April 28, after losing every single Super Tuesday primary election, Edwards formally dropped out of the presidential race.

■ Back on the Campaign Trail

■ Kerry Names Edwards as His Running Mate ■
In the scramble to recoup their losses after Edwards dropped out of the Presidential race, trial lawyers began funneling donations to John Kerry's campaign and lobbying for Kerry to name Edwards as his running mate. On July 6, three weeks prior to the Democratic National Convention in Boston, John Kerry announced that he had selected John Edwards as his running mate.

John Kerry and John Edwards are deep in the pockets of personal-injury attorneys, and it's clear that the trial lawyers will use this influence to protect their interests, no matter what the cost to America. Sign the e-petition and tell John Kerry and John Edwards to stop taking trial lawyers' money.

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The Truth About Trial Lawyers

They have the money. They control the candidates. Their agenda is clear.

They are the most powerful force in the health care system. They are the most powerful force in the health care system.

The War On America's Health Care System

America's health care system is in serious trouble. Costs are spiraling out of control, for patients, physicians, and health insurance providers alike. While many factors contribute to the rising cost of health care, the abuse of the legal system in medical malpractice cases is perhaps the most heinous offender.

How John Edwards Helped Drive the Health Care System Into Crisis

As a trial lawyer, John Edwards made his career by dragging good physicians through medical malpractice courts at great cost to America's health care system. Thanks to the efforts of John Edwards and his trial-lawyer buddies, health care is in a greater state of crisis than ever before:

- 78 percent of obstetricians have been sued for malpractice.
- His blockbuster settlements, which included jury awards of more than \$163 million in 63 lawsuits, helped dramatically increase

The "ambulance chaser" image associated with personal-injury attorneys is no joke—medical malpractice cases can be very lucrative for trial lawyers, and they encourage patients to sue at the drop of a hat. More and more often, juries award millions of dollars in non-economic, "pain and suffering" damages, not realizing that up to half of these awards go to court costs and attorney's fees.

The last thing that trial lawyers want is for Congress to fix America's medical liability system. Right now, lawyers can seek unlimited non-economic damages in medical liability cases—and claim an unlimited amount in attorney's fees. Trial lawyers oppose caps on non-economic damages and limits on attorney's fees—both of which would save America billions of dollars each year and ensure that plaintiffs receive fairer settlements.

John Edwards Helped Drive the Health Care System Into Crisis

John Edwards Helped Drive the Health Care System Into Crisis

John Edwards Helped Drive the Health Care System Into Crisis

John Edwards Helped Drive the Health Care System Into Crisis

malpractice insurance premiums for physicians, driving good doctors out of business.

- Prices don't just go up for health care providers. In addition to increasing malpractice premiums, lawsuits like those Edwards brought increase the cost of health care for all Americans.

- Lawsuits like these encourage physicians to practice "defensive medicine." For example, Edwards alleged that C-sections could prevent cerebral palsy. Now, doctors perform five times as many C-sections—but the rate of cerebral palsy diagnosis has stayed the same. These unnecessary surgeries heap added costs on our already fragile health care system.

- In 2000, Edwards was criticized for sponsoring legislation that would make it easier to file lawsuits against HMOs.²²

"Edwards can't work against [personal injury attorneys'] interests, given the money they have given him."—Larry Sabato, political scientist, *University of Virginia*

- Edwards sponsored a motion to kill liability exemption for doctors providing pro-bono services. With the threat of being sued for pro-bono work, doctors would be discouraged from providing free medical services to the needy.
- Edwards opposed caps on medical malpractice awards on four separate

For fifteen years, Congress has been in a pitched battle over the reform of America's legal liability system. To preserve their own interests, trial lawyers have dumped millions of dollars on the Democratic Party...and for fifteen years, the Democrats have successfully blocked reform legislation.

Senator Kerry has consistently voted to kill legislation that would fix America's medical liability system. And in his single term in Congress, Edwards opposed every piece of medical malpractice reform legislation that came to a vote—that is, when he wasn't absent from the Senate floor. In spite of their claims to fight for the "little guy" and work to fix the medical liability system, the Senators' votes have actually made the problem worse.

- Though he has promised to work to reform the medical liability system, Kerry opposed or voted to block medical malpractice reform at least 10 times.

occasions. His votes help preserve trial lawyers' ability to claim millions of dollars in attorney's fees at the expense of plaintiffs.

"John Edwards is one of us...He's already said that medical malpractice reform will pass over his dead body." —Ned Good, President, Inner Circle

• **Patient Protection Act: This bill proposed a \$750,000 cap on federal non-economic damages.** Kerry, Edwards, and all but one other Democratic Senator voted against the bill. The bill was not passed.

• **Patient Protection Act: Small-Business Exemption.** This amendment would exempt businesses with less than 50 employees from liability in lawsuits filed by employees and employees' families. Rather than protecting small businesses from potentially devastating litigation, Kerry, Edwards, and 42 other Democratic Senators voted against the amendment.

• **Patient Protection Act: Monetary Awards.** This amendment would cap attorney's fees at 15 percent of the damages awarded, ensuring that patients receive 85 percent of the damages in a medical liability lawsuit. Upset at the prospect of trial lawyers' fees being limited to 15 percent of the damages awarded in a medical malpractice suit, Kerry, Edwards, and every other Democratic Senator voted to kill the amendment.

"...Edwards has been unflinching in his support of the personal-injury bar." —Sherman Joyce, President, American Tort Reform Association

• **Amendment to the Patient Protection Act.** This amendment proposed no federal caps on economic or non-economic damages. President Bush said that he "could not, in good conscience, sign this bill," because it "puts the interests of trial lawyers before the interest of patients." Every Democratic Senator, including John Kerry and John Edwards, voted in the interest of trial lawyers, and the bill was passed by the Senate.

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- Amendment to the Greater Access to Affordable Pharmaceuticals Act. This legislation faced a proposed amendment that would limit medical malpractice damages, cap attorney's fees in medical malpractice cases, and require lawsuits to be filed within two years of discovery of an injury. Once again protecting trial lawyers' interests, every Democratic Senator voted against the amendment.

The Bigger Picture on Liability Reform

As if it weren't enough to block medical malpractice reform, Kerry and Edwards have opposed liability reform of any kind. Their votes have contributed to an increasingly warped legal system that enables lawyers to grow rich off of plaintiffs and costs Americans hundreds of billions of dollars every year.

- Kerry fought against allowing a vote to approve a cap on non-economic damages in product liability cases, enabling trial lawyers to seek millions of dollars in jury awards—and then claim up to half of the awards in attorney's fees.
- Edwards' "arm-twisting" defeated an amendment to the Terrorism Risk Insurance Act, which would have imposed limits on personal-injury lawyers' ability to sue in the wake of a terrorist attack.
- In June 1999, Edwards voted for an amendment that would have removed language from Y2K liability legislation that protected computer companies from liability lawsuits.
- In July 1999, Edwards voted against conference report of Y2K liability legislation that capped punitive damages in civil suits related to millennium computer problems.

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The Truth About Trial Lawyers

They have the money. They control the candidates. Their agenda is clear.

The lawyers have been paid more than \$1 billion in fees for the past ten years. They have been paid more than \$1 billion in fees for the past ten years. They have been paid more than \$1 billion in fees for the past ten years.

The Class-Action Racket

Trial lawyers have transformed class-action lawsuits into a cash cow, making a mockery of what was supposed to be a legitimate platform for plaintiffs to seek compensation for personal injury. Abuse of the class-action courts allows personal-injury attorneys to rake in millions of dollars in fees at the expense of the victims, who often receive trivial compensations, and the economy, which ultimately must absorb the costs of class-action cases.

"This elite group of greedy lawyers is exploiting our legal system and turning it into jackpot justice." —Dr. Richard Corlin, American Medical Association

In the past ten years alone, medical malpractice lawsuits have skyrocketed, increasing by 1,000 percent on the state level and by 300 percent in federal courts. The exploitation of the legal system is rampant, but with so many Members of Congress in the trial lawyers' pockets, any legislative efforts to restrict class-action litigation or cap outrageous jury awards are quickly defeated.

Senators John Kerry and John Edwards—who have received millions of dollars from personal-injury attorneys—as well as the majority of Democratic Senators, have consistently voted to protect trial lawyers' ability to grow rich off of a broken legal system.

If you can't imagine how much value trial lawyers place in preserving America's flawed legal system, just take a look at how they've abused it so far.

Respectfully,

John Edwards, President
Kerry Edwards, Attorney General

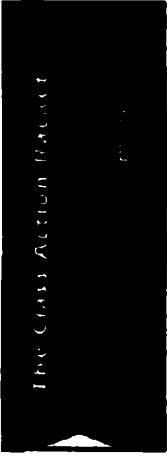
John Edwards, President
Kerry Edwards, Attorney General

John Edwards, President
Kerry Edwards, Attorney General

John Edwards, President
Kerry Edwards, Attorney General

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Verdict: Blockbuster Voids

This lawsuit challenged the fairness of Blockbuster's late fee policy, even though the policy had been fully disclosed to consumers.¹¹

Verdict:

Up to \$20 worth of coupons for free video rentals (excluding new releases) and certificates for \$1 off of food items. Blockbuster was not required to change its late-fee policy, and the company estimates that fewer than 10 percent of the coupons issued as a result of the suit will be redeemed.

Verdict: Blockbuster Voids

\$9.25 million. The lawyers who sued Blockbuster actually claim that these fees were low.

Verdict: Blockbuster Voids

[REDACTED]

Verdict: Blockbuster Voids

This suit was filed because of a "defect" in the floppy disk controllers of Toshiba laptops. Lawyers were able to bring this suit against Toshiba successfully, even though not one customer reported any injury whatsoever or any problem that could be ascribed to the defect.¹²

Verdict:

Every plaintiff received cash or coupons worth \$210 - \$443. The two named plaintiffs in the case received \$25,000 apiece.

Verdict: Class Action Voids

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[REDACTED] \$147.5 million, 200,000 times more than the compensation received by any single member of the class.

[REDACTED]

[REDACTED] v. BankBoston Mortgage Agency

[REDACTED] Lawyers brought this suit on behalf of more than 700,000 people who had mortgage escrow accounts with the Bank of Boston, alleging that the bank over-collected on customers' accounts. Of these 700,000 people, only 300,000 opted to participate in the lawsuit.¹³

[REDACTED] Each class member received a refund of up to \$8.76. As part of the settlement the Bank of Boston was allowed to deduct these fees from the accounts of the 300,000 class members who had joined the suit. Because the legal fees were deducted from their accounts, *some class members actually lost nearly \$100*. For example, one class member received an award of \$2.19 but owed \$81.33 in attorney's fees, so the suit cost him \$88.14.

[REDACTED] \$8.5 million.

[REDACTED] v. State Farm Insurance Company

[REDACTED] Lawyers brought this suit against State Farm for not using "original equipment manufacturer (OEM)" parts for repairs to policyholders' cars. The suit was filed and won, even though *some states require or encourage the use of "non-OEM" parts as a way to keep repair costs—and premiums—down.*¹⁴

[REDACTED]

\$223 per class member.

[REDACTED]

\$303 million.

[REDACTED]

[REDACTED]

This case against General Mills alleged that the oats used to produce Cheerios-brand cereal were treated with non-approved pesticides. No consumers were injured as a result of the use of these pesticides.¹⁵

[REDACTED]

[REDACTED]

A coupon for a box of cereal.

[REDACTED]

\$2 million (approximately \$2,000 per hour).

[REDACTED]

[REDACTED]

The suit alleged that AT&T and Lucent engaged in misleading actions regarding telephone losses and associated charges.¹⁶

[REDACTED]

[REDACTED]

\$93 per class member.

[REDACTED]

\$84.5 million—nearly ten times the total compensation to the plaintiffs.